

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Joseph A. Korth, being first duly sworn, depose and state as follows:

I. INTRODUCTION AND AGENT BACKGROUND

1. I am a Special Agent (SA) with the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), currently assigned to the Billings Field Office. I have been employed by the ATF since July 2013. I have completed the Criminal Investigator Training Program at the Federal Law Enforcement Training Center (FLETC). I have also completed the ATF Special Agent Basic Training course. While attending the academies at FLETC in Glynco, Georgia, I received specialized training concerning violations of the Gun Control Act within Title 18 of the United States Code and violations of the National Firearms Act within Title 26 of the United States Code. I have investigated numerous cases involving modified firearms and weapons that fall under the National Firearms Act (NFA). I also have attended training and amassed reference material regarding firearms and ammunition interstate commerce and testified in court as an interstate nexus expert. As such, I am an investigative or law enforcement officer of the United States, within the meaning of 18 U.S.C. § 2510(7), that is, an officer of the United States empowered by law to conduct

investigations and make arrests for offenses enumerated by 18 U.S.C. § 2516. I am currently the Resident Agent in Charge (RAC) of the Billings Field Office and have been so since September 2019. Your Affiant is involved in the investigation of a suspected violation of Federal laws by Foster John Michael WITZEL, a person who is currently on state supervision with Montana State Probation & Parole.

II. DESCRIPTION

2. This Affidavit is submitted in support of a Criminal Complaint requested for Foster WITZEL for violations of possession of an unregistered firearm (NFA), in violation of Title 26 United States Code 5861(d). The statements in this Affidavit pertain to the investigation described below and are based in part on information provided by my own observations and experience as an ATF Special Agent, and the observation and experiences of other fellow law enforcement officers participating in the investigation. This Affidavit does not purport to contain all the facts related to this investigation, but only those facts necessary to establish probable cause with respect to the aforementioned offense.

III. PROBABLE CAUSE

3. On February 2, 2020, at approximately 0950 hrs, Billings Police Department Officers responded to 349 S. Billings Boulevard, Billings, Montana for a call for service involving suspicious activity. Specifically, the call for service was regarding a male individual, later identified as Foster WITZEL, on the back porch of a residence and peering through the kitchen window. WITZEL was confronted by the homeowner and he ran. WITZEL's description was passed to dispatch and he was located by Officers a short time later in the vicinity of the residence. The Officer that stopped WITZEL and observed pocket knives and a hatchet on his person. The Officer did a pat search of WITZEL for weapons and was able to feel an unknown object in WITZEL's front jacket pocket. WITZEL gave permission to remove the objects which Officer's recognized as explosive devices. WITZEL made statements that he made the devices out of gun powder and BB's and he was going to "blow up mailboxes and stuff". Upon attempting to identify WITZEL, he provided a false name to the Officers. WITZEL's shoe prints matched the impressions at the residence and WITZEL was ultimately arrested. After confirming WITZEL's identification, Officers were made aware that WITZEL was absconding from

probation out of Gallatin County, Montana and had arrest warrants.

During transport to the Yellowstone County Detention Facility

WITZEL made admissions to being on the porch at the residence.

The explosives were turned over the Billings Police Department

Bomb Squad to be x-rayed and dismantled to make safe.

4. On February 13, 2020, ATF Special Agent (SA) Cory Kambak and ATF Explosives Enforcement Officer (EEO) Stephen Shelley contacted Sergeant Gartner of the Billings Police Department Bomb Squad. Sergeant Gartner informed SA Kambak that the devices confirmed a mixture of powder and BB pellets resembling those from buckshot ammunition. SA Kambak and EEO Shelley took possession of the explosives evidence for examination and determination. As an EEO, Shelley is responsible for classifying explosive devices per ATF authority. Based on preliminary review of the evidence and examination, the metal explosive device was suspected to be a *Destructive Device* and be subject to registration by the National Firearms Act in the ATF National Registration and Transfer Record (NFRTR). A *Destructive Device* is a firearm, as defined in Title 18 USC 921(a)(3)(D) and Title 26 United States

Code 5845(a)(8), and bears no manufacturer marks of identification or serial number as required by Title 26 United States Code 5842.

5. On February 24, 2020, SA Kambak requested a query of the National Firearms Registration and Transfer Record (NFRTR), which is the database that firearms and devices that are classified under the National Firearms Act are registered. ATF is the custodian of the records for the NFRTR. The query was for Foster WITZEL with his date of birth and the *Destructive Device*. All the firearms and devices within the NFRTR are required to have serial numbers for registration. The results of the query showed WITZEL has no records associated to him and since the *Destructive Device* does not have a serial number it is unable to be registered.

6. On May 28, 2020, the explosive device made of the metal cylindrical container and its contents were sent to the ATF Forensic Science Laboratory. The examination concluded that the device consisted of a steel container with an overall length of 3 ½ inches and width of approximately 2 inches, a functional green pyrotechnic fuse, multiple types of explosive powder, and steel spheres.

7. On June 4, 2020, EEO Shelley made a determination of the metal explosive device. Based on EEO Shelley's review of the metal

device design, laboratory confirmation of different explosives powder and steel spheres, and means of initiation by pyrotechnic burning fuse, the device is designed to function by explosion. EEO Shelley confirmed the preliminary findings and classified the explosive device as a *Destructive Device*.

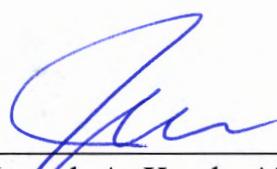
8. On June 11, 2020, RAC Korth reviewed recent criminal history records and Montana Probation and Parole Bureau, Conditions of Probation & Parole and Firearms Regulations forms for Foster WITZEL. WITZEL is on probation for convictions of *Burglary, Accountability for Deceptive Practices, and Escape*. On the Conditions form under Question # 5 reads “*WEAPONS: I will not use, own, possess, transfer, or be in control of any firearms, ammunition (including black powder), or weapons.*” Next to question # 5 are the handwritten initials FW (Foster WITZEL). The Conditions form is signed by WITZEL and dated July 29, 2015. On the Firearms Regulations form signed by WITZEL on April 16, 2018 is the statement “*I cannot possess or own firearms and ammunition. Federal law prohibits a convicted felon from possessing or receiving firearms or ammunition [Title 18, United States Code, Section 922(g)(1)]. Therefore, I understand I could be*

prosecuted for violating Federal Law. I also understand I could be punished for violation my conditions of supervision AND federally prosecuted.” RAC Korth found multiple arrests for theft and drug distribution offenses in WITZEL’s criminal history between February 2, 2020 and the date of this affidavit. One of the arrests involved a high speed pursuit on Interstate 90 near Laurel, Montana where WITZEL’s vehicle was travelling at speeds of 120 MPH in a stolen vehicle.

IV. CONCLUSION

10. Based on my training and experience, and the foregoing facts, I believe there is probable cause to believe that Foster WITZEL is in violation of possession of a firearm not registered in the National Firearms Registration and Transfer Record in violation of Title 26 United States Code 5861(d). This violation occurred in the County of Yellowstone, in the State and District of Montana on or before February 2, 2020.

11. I swear that the facts presented herein are true and accurate to the best of my knowledge.



Joseph A. Korth, ATF Resident Agent in Charge.

SUBSCRIBED TO AND SWORN BEFORE ME THIS 19 DAY OF
June, 2020.



Timothy J. Cavan
United States Magistrate Judge
District of Montana